IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

WP(C).No. 8140 of 2007(R)

PETITIONERS:

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1. THE MANAGER,A.N.M.M.U.P SCHOOL,
THALI P.O.,THRISSUR DISTRICT.

2. SREEDEVI P.V, W/O.V.V.N UNNI,AGED 30
YEARS,UPSA ANMUPS,THALI P.O,THRISSUR,RESIDING AT
PARUTHIKKATTU,VITHATTUR,ALANGOTTUKARA,
VADAKANCHERRY,THRISSUR- 680 593..

BY ADV. SRI.M.R.RAJENDRAN NAIR
SRI.M.R.HARIRAJ
SMT.REKHA VASUDEVAN
SRI.SURAJ.S
SRI.P.A.KUMARAN
SMT.VINEETHA B.
SRI.K.S.SARATH KUMAR
SRI.S.NITHIN

RESPONDENTS:

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1. STATE OF KERALA, REP.BY SECRETARY TO
GOVERNMENT,DEPARTMENT OF GENERAL EDUCATION,
SECRETARIAT,THIRUVANANTHPAURAM

2. THE ADDITIONAL DIRECTOR (ACADEMIC),
OF PUBLIC INSTRUCTIONS,THIRUVANANTHAPRUAM.

3. THE DISTRICT EDUCATIONAL OFFICER,
CHAVAKKAD,THRISSUR.

4. THE ASSISTANT EDUCATIONAL OFFICER,
VAKAKKANCHERRY,THRISSUR.

5. SMT.SUNITHA A,W/O.JAYACHANDRAN V.T,
VALANTH HOUSE,P.O PILAKKAD, THRISSUR DISTRICT.

BY GOVERNMENT PLEADER (SHRI A. J. VARGHESE)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/03/2007, THE COURT ON 30/03/2007 DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 8140 OF 2007 R

Dated this the 30th March, 2007

JUDGMENT

The fifth respondent was a Rule 51A claimant. According to petitioners, she made Ext.P1 relinquishment letter voluntarily in the presence of the AEO. As the fifth respondent had submitted the relinquishment of her right, second petitioner who was also a Rule 51A claimant was appointed to one of the vacancies. By Ext.P2, the request of fifth respondent to appoint her against the third vacancy of UPSA after accommodating a senior, was refused. Ext.P3 is the order of the fourth respondent directing first petitioner to appoint the fifth respondent. This was confirmed in Exts.P7 and P8. Petitioner challenges Exts.P3, P7 and P8 and seeks a declaration that the appointment of second petitioner is valid. According to learned counsel for petitioners, there is a freedom to relinquish. This must be treated as protected. He would further argue that the procedure prescribed under Note 2 to Rule 51A of Chapter XIV A KER

relates to the forfeiture of the claim under Rule 51A. He would contend that forfeiture and relinquishment are two different and distinct legal concepts. It is his case that relinquishment demand some overt action while forfeiture will happen without any overt action. Relinquishment essentially is a waiver of a right. He would contend that the decision of this Court in Lakshmikutty Amma v. Vijayalakshmikutty (1992 (2) KLT 341) proceeds on the basis that relinquishment and forfeiture are one and the same thing, which is untenable. Counsel for petitioner would submit that the decision of the Apex Court referred to in the Division Bench Judgment did not actually warrant the view taken by the Division Bench.

2. The Division Bench in the aforesaid decision took the view that both Rule 51A and Note 2 thereunder are clearly based upon public policy. It is to be noted that Note 2 provides that following second notice, if there is inaction on the part of the claimant, the preferential right would be forfeited. After finding that the matter is based on public policy, the Court took the view

that even if the relinquishment letters were executed voluntarily, it may not result in the forfeiture of the preferential right. In arriving at the decision, the Court also considered the principle that when the Statute prescribes that an act has to be done in a particular manner, that act can be done only in the manner and not in any other manner. No doubt, the Court also referred to the decision in Ramachandran v. Govind (AIR 1975 SC 915). Counsel for petitioners would point out that actually the reference to the said decision was inapposite as it turned on the facts which did not warrant the Division Bench drawing any support from it. That was a case under the Rent Control Act and the question was whether the surrender by the tenant in that case which did not conform to the procedure mentioned in the Act was a nullity. The Apex Court affirmed the view of the High Court that it was a nullity. The Rule provides for the forfeiture of a right available to a claimant under Rule 51A. Finding that the right was based on public policy, I am of the view that it may not be open to doubt the correctness of the Division Bench,

when it takes the view that the preferential right cannot be relinquished, even if the relinquishment is voluntary. This is a result which follows from the finding that the right is based on public policy. If the right cannot be relinquished being based on public policy, then necessarily, unless the procedure prescribed in Note 2 is followed, the right cannot be forfeited. I think this would be the position of law. In such circumstances, there is no merit in the Writ Petition and the same is dismissed.

K. M. JOSEPH, JUDGE

kbk.